

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Barry E. Janay, Esq. (ID # 216812017)
THE LAW OFFICE OF BARRY E. JANAY, P.C.
354 Eisenhower Parkway, Suite 1250
Livingston, New Jersey 07039
bjanay@lobej.com or
asanchez@lobej.com or
Tel: (908) 633-7238
Attorneys for Plaintiff

WILLIAM SHERMAN d/b/a SUPER PLUMBER, LLC

Plaintiff,

vs.

ROYAL PRO HEATING AND COOLING LLC d/b/a

SUPER PLUMBERS HEATING AND AIR

CONDITIONING,

Defendant(s).

Civil Action No: 2:23-cv-2075

**COMPLAINT AND
JURY DEMAND**

Plaintiff, through its attorneys, for its Complaint against the Defendant, alleges:

THE PARTIES

1. Plaintiff William Sherman d/b/a Super Plumber, LLC (hereinafter “Sherman”), is a New Jersey Limited Liability Company with its principal place of business at P.O. Box 1802, Union, New Jersey 07083.

2. Sherman’s company is a provider of plumbing and related services and has operated for over thirty years.

3. Upon information and belief, Defendant Royal Pro is a Limited Liability Company with its principal place of business at 730 Goffle Road, Hawthorne, New Jersey 07506.

4. Defendant and Sherman are direct competitors in the same geographic market, both offering plumbing and other related services in the state of New Jersey.

JURISDICTION AND VENUE

5. This is an action at law and in equity for trademark infringement, false designation of origin, and unfair competition arising under the Trademark Act of 1946, 15 U.S.C. § 1051 *et seq.* (the “Lanham Act”) and the common law, as well as for violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* (the “RICO Act”), violation of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-2 *et seq.* (the “NJCF Act”), and tortious interference under New Jersey common law.

6. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1338 and the principles of supplemental jurisdiction pursuant to 28 U.S.C. § 1367, as the controversy at issue arises under a federal question.

7. Upon information and belief, Defendant transacts business within this district, derives substantial revenue from intrastate and interstate commerce, and has committed tortious acts within this district and also without this district having injurious consequences within this district, and Defendant is otherwise within the jurisdiction of this Court.

8. Venue is proper in this judicial district pursuant to, at least, 28 U.S.C. §§ 1391.

FACTUAL BACKGROUND

9. Founded in or about 1984 as Super Plumber, Sherman’s business has been providing high quality plumbing and related services to customers throughout the states of New Jersey, New York, Pennsylvania, Connecticut, and Delaware.

10. Sherman is a local plumber with nearly forty years of providing service to his community and the surrounding areas and states.

11. Since as early as 1984, Sherman has been providing plumbing and other related services under the mark “SUPER PLUMBER”.

12. The “SUPER PLUMBER” trademark is an inherently strong and distinctive mark that uniquely identifies the source of Sherman’s services.

13. On its own, and as the result of Sherman’s substantial advertisement and promotion of these services, the “SUPER PLUMBER” trademark has become easily recognizable among customers and clientele, has acquired strong commercial distinctiveness and goodwill, and has come to symbolize the consistent quality of plumbing and related services provided by Sherman and the employees of “SUPER PLUMBER”.

14. Sherman d/b/a Super Plumber, LLC owns U.S. Trademark Registration No. 3792107 on the Principal Register of the U.S. Patent and Trademark Office for the “SUPER PLUMBER” mark in standard characters for use in connection with “*Air conditioning contractor services; heating contractor services; plumbing services*”. The application that resulted in this registration was filed on April 6, 2009, and the registration was issued on May 25, 2010. This registration also notes the first use of the “SUPER PLUMBER” mark in United States (“US”) commerce as January 1, 1986. A copy of the registration certificate is attached as Exhibit A.

15. As a result of Sherman’s continuous and exclusive use of the “SUPER PLUMBER” trademark and Sherman’s substantial advertisement and promotion of plumbing and related services provided under the “SUPER PLUMBER” trademark, the “SUPER PLUMBER” trademark has become easily recognizable among customers, has acquired commercial

distinctiveness and goodwill, and has come to symbolize the consistent quality of services offered by Sherman's business.

16. In direct competition with Sherman, Defendant offers plumbing and related services within the same geographic area.

17. In or about December 2017, Sherman learned that Defendant was using the "SUPER PLUMBER" mark to promote its own plumbing and related services that directly competed with Sherman's services.

18. Defendant has no connection or affiliation with Sherman and its use of Sherman's "SUPER PLUMBER" trademark and in connection with its plumbing and related services is not currently and has never been authorized by Sherman.

19. Regardless, Defendant has used and, upon information and belief, continues to use the "SUPER PLUMBER" mark to promote its plumbing and related services. (For example, Exhibit B).

20. On or about December 5, 2017, Sherman contacted Defendant demanding that it cease and desist any and all uses of the "SUPER PLUMBER" mark.

21. Shortly after alerting Defendant of their infringing usage, Sherman was informed that they did not care and would continue to use the trademark regardless of his demand that they stop, or words to that effect.

22. Sherman was aware that Defendant had not ceased its use of the "SUPER PLUMBER" mark and had continued use of the mark in opposition to repeated requests from Sherman to stop.

23. After further informal communication between Sherman and Defendant, Defendant ultimately refused to stop the infringing use of Sherman's mark despite having full knowledge that their use was infringement.

24. Upon information and belief, Defendant has continued its infringing activities and will continue indefinitely, causing further harm to Sherman unless relief can be granted.

COUNT I – FEDERAL TRADEMARK INFRINGEMENT

(Federal Trademark Infringement – Lanham Act § 32)

25. Sherman repeats and realleges all of the above allegations as if fully set forth herein.

26. Sherman owns a valid and enforceable Federal Trademark Registration for the “SUPER PLUMBER” mark covering “*Air conditioning contractor services; Heating contractor services; Plumbing services.*” See Exhibit A.

27. Defendant’s use of the “SUPER PLUMBER” mark in connection with its services has caused and/or is likely to cause confusion, deception and mistake by creating the false and misleading impression that Defendant’s services are approved by Sherman, or are associated or connected with Sherman, or have his sponsorship or endorsement, and as such constitutes infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114(1)(a).

28. Unless enjoined, Defendant will continue to cause a likelihood of confusion and deception to members of the public and injury to Sherman’s goodwill and reputation as embodied in the “SUPER PLUMBER” mark, for which Sherman has no other adequate remedy at law.

29. Defendant has caused and is likely to continue causing substantial injury to the public and to Sherman, and Sherman is entitled to injunctive relief and to recover Defendant’s profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys’ fees under 15 U.S.C. §§ 1114, 1116, and 1117.

COUNT II – FEDERAL COMMON LAW TRADEMARK INFRINGEMENT

(Federal Unfair Competition and False Designation of Origin – Lanham Act § 42(a))

30. Sherman repeats and realleges all of the above allegations as if fully set forth herein.

31. Through extensive use of the “SUPER PLUMBER” mark since at least as early as January 1, 1986, as noted in the trademark registration, Sherman has developed extensive goodwill in said mark, which goodwill is protected by, *inter alia*, Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

32. Defendant’s use of Sherman’s “SUPER PLUMBER” mark has caused and/or is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant’s services are provided by Sherman, or are associated or connected with Sherman, or have the sponsorship, endorsement, or approval of Sherman.

33. Defendant has made false representations, false descriptions, and false designations of origin of its services in violation of 15 U.S.C. § 1125(a), and Defendant’s activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the public and, additionally, injury to Sherman’s goodwill and reputation as embodied in the “SUPER PLUMBER” mark, for which Sherman has no adequate remedy at law.

34. Defendant’s actions demonstrate an intentional, willful, and malicious intent to trade on Sherman’s goodwill associated with the “SUPER PLUMBER” mark to the considerable and irreparable injury to Sherman.

35. Defendant’s conduct has caused, and is likely to continue causing, substantial injury to the public and to Sherman, and Sherman is entitled to injunctive relief and to recover Defendant’s profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys’ fees pursuant to 15 U.S.C. §§ 1116 and 1117.

COUNT III – STATE UNFAIR COMPETITION CLAIM

(State Common Law Unfair Competition and Trademark Infringement)

36. Sherman repeats and realleges all of the above allegations as if fully set forth herein.

37. For several years, and believed to be at least as early as January 1, 1986, Sherman has made exclusive and continuous use in New Jersey of the “SUPER PLUMBER” mark in connection with plumbing and related services.

38. Sherman is the legal owner of the “SUPER PLUMBER” mark which is validly and rightfully entitled to protection.

39. Defendant’s use of a copy, variation, reproduction, simulation, or colorable imitation of the “SUPER PLUMBER” mark is likely to cause confusion, mistake, or deception regarding the origin of the plumbing and related services offered by Defendant or its sponsorship, connection, or affiliation under, at least, New Jersey Statutes, Title 56 § 4-1, *et seq.*

40. Defendant’s use of the “SUPER PLUMBER” mark is unauthorized, and Defendant’s acts constitute unfair competition and deceptive acts and practices under, at least, New Jersey Statutes, Title 56 § 8-2, *et seq.*

41. Defendant’s conduct is causing damage to Sherman, Sherman’s business, the business’s goodwill, and Sherman’s personal and professional reputation, and will continue to damage Sherman and is likely to confuse the public unless such conduct is enjoined by this Court.

42. Upon information and belief, Defendant, by its acts alleged herein, has deliberately calculated to deceive, and has deceived, the relevant trade and public into accepting and purchasing Defendant’s plumbing and related services in the mistaken belief that they are Sherman’s or that they are sponsored by, connected with, or produced under the supervision of Sherman.

43. Upon information and belief, Defendant by its acts alleged herein has intentionally attempted to pass off Defendant’s plumbing and related services for those of Sherman.

44. Sherman will suffer irreparable harm and damage as a result of Defendant's wrongful acts alleged herein, and Sherman has no adequate remedy at law.

45. Defendant's conduct has caused, and is likely to continue causing, confusion and/or substantial injury to the public and to Sherman, and Sherman is entitled to injunctive relief and to recover Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees pursuant to, at least, New Jersey Statutes, Title 56 § 8-13, *et seq.*, and under New Jersey Common Law.

COUNT IV – CIVIL RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

(Federal Civil RICO Claim – 18 U.S.C. § 1961, *et seq.*)

46. Sherman repeats and realleges all of the above allegations as if fully set forth herein.

47. Sherman owns and operates a lawfully incorporated and registered business that operates primarily in New Jersey, New York, Pennsylvania, Connecticut, and Delaware, which utilizes the "SUPER PLUMBER" mark in conjunction with the provided plumbing and related services.

48. Defendant's use of the "SUPER PLUMBER" mark in connection with its services consists of conduct by an enterprise which, through a pattern of racketeering activity, has irreparably injured Sherman's business and such goodwill as the "SUPER PLUMBER" mark has garnered over the thirty-eight years of use associated with Sherman's business.

49. Defendant's use of the "SUPER PLUMBER" mark in connection with its services has and/or is likely to materially mislead consumers by employment of fraudulent wire communications regarding the source of Defendant's services, specifically via the domain "www.superplumbersnj.com."

50. Unless enjoined, Defendant will continue to materially mislead and deceive members of the public and cause injury to Sherman's goodwill and reputation as embodied in the "SUPER PLUMBER" mark, for which Sherman has no adequate remedy at law.

51. Defendant has caused and is likely to continue causing substantial injury to the public and to Sherman, and Sherman is entitled to injunctive relief and to recover Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under 18 U.S.C. § 1964.

COUNT V – BUSINESS FRAUD

(State Law Consumer Fraud Claim – N.J.S.A. 56:8-137 *et seq.*)

52. Sherman repeats and realleges all of the above allegations as if fully set forth herein.

53. Sherman owns and operates a lawfully incorporated and registered business within the state of New Jersey, which utilizes the "SUPER PLUMBER" mark in conjunction with plumbing and related services.

54. Defendant's use of the "SUPER PLUMBER" mark in connection with its services has caused and/or is likely to cause confusion, deception and mistake by creating the false and misleading impression that Defendant's services are approved by Sherman, or are associated or connected with Sherman, or have his sponsorship or endorsement.

55. As such, Defendant's use of the "SUPER PLUMBER" mark constitutes fraudulent misrepresentation of its business to consumers and the public at large.

56. Unless enjoined, Defendant will continue to fraudulently mislead members of the public and cause further irreparable injury to Sherman's goodwill and reputation as embodied in the "SUPER PLUMBER" mark, for which Sherman has no adequate remedy at law.

57. Defendant has caused and is likely to continue causing substantial injury to the public and to Sherman, and Sherman is entitled to injunctive relief and to recover Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under N.J.S.A. 56:8-146.

COUNT VI – TORTIOUS INTERFERENCE

(State Common Law Tortious Interference With Prospective Economic Advantage)

58. Sherman repeats and realleges all of the above allegations as if fully set forth herein.

59. Sherman owns and operates a lawfully incorporated and registered business within the state of New Jersey, which utilizes the "SUPER PLUMBER" mark in conjunction with the provided plumbing and related services.

60. Defendant's use of the "SUPER PLUMBER" mark in connection with its services has caused and/or is likely to cause wrongful, intentional interference with Sherman's reasonable expectation of economic benefit and/or advantage, cultivated through decades of high-quality service and the valuable goodwill of his business reputation.

61. Unless enjoined, Defendant will continue to wrongfully and intentionally interfere with Sherman's ability to realize the reasonable economic benefit and/or advantage to which his business is likely to enjoy and will cause injury to Sherman's goodwill and business reputation as embodied in the "SUPER PLUMBER" mark, for which Sherman has no adequate remedy at law.

62. Defendant has caused and is likely to continue causing substantial injury to the public and to Sherman, and Sherman is entitled to injunctive relief and to recover Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorneys' fees under N.J.S.A. 2A:15-5.12.

WHEREFORE, Sherman requests the Court grant the following relief:

- A. Grant a Permanent Injunction enjoining and restraining Defendant and all other persons acting by, through, and/or in active concert with it, from directly or indirectly using the “SUPER PLUMBER” or any other mark, work, or name confusingly similar to “SUPER PLUMBER”, alone or in combination with any other letters, words, letter strings, phrases, or designs as a trademark or service mark in commerce or in connection with the marketing and selling of plumbing and related services (including, but not limited to, on websites, in domain names, in hidden text or metatags, or as Google® AdWords search key terms);
- B. Order that all advertisements or colorable imitations in the possession of Defendant and its agents, servants, employees, heirs, successors, and assigns, and all other persons acting by, through, or in active concert with it, bearing the “SUPER PLUMBER” mark shall be delivered up and destroyed;
- C. Grant a Permanent Injunction enjoining and restraining Defendant and its agents, servants, employees, heirs, successors, and assigns, and all other persons acting by, through, and/or in active concert with it, from engaging in any course of conduct likely to cause confusion, deception, or mistake, or to further injure Sherman’s business reputation;
- D. Compel Defendant to surrender to Sherman the domain “www.superplumbersnj.com” and any related information and data for Sherman to dispense with at his discretion;

- E. Award compensatory damages to Sherman, as the Court deems just in the circumstances, caused by reason of Defendant's acts of unfair competition complained of herein and that said damages be trebled pursuant to 15 U.S.C. § 1117(a) as a result of Defendant's willful violation of 15 U.S.C. § 1125(a), consisting of, at a minimum:
- a. Loss of past profits in the amount of \$15,000,000.00;
 - b. Loss of future profits in an amount to be determined at trial;
 - c. Loss of professional reputation in an amount to be determined at trial;
 - d. Loss of business reputation in an amount to be determined at trial;
and
 - e. Cost of mitigation for such reputational damage in an amount to be determined at trial;
- F. Award damages to Sherman, as the Court deems just in the circumstances, caused by reason of Defendant's wire fraud violations of the RICO Act complained of herein and that said damages be trebled pursuant to 18 U.S.C. § 1964(c) as a result of Defendant's willful violation of 18 U.S.C. § 1962(a);
- G. Award damages to Sherman, as the Court deems just in the circumstances, caused by reason of Defendant's violation of the NJCF Act complained of herein as a result of Defendant's willful violation of N.J.S.A. 56:8-139;
- H. Award damages to Sherman, as the Court deems just in the circumstances, caused by reason of Defendant's acts of tortious interference complained of

herein as a result of Defendant's willful violation of New Jersey common law;

- I. Award statutory damages, if applicable;
- J. Award punitive and exemplary damages against Defendant by reason of Defendant's intentional and willful conduct;
- K. Award costs of this action, together with attorneys' fees, to Sherman pursuant to 15 U.S.C. § 1117(a), New Jersey Statutes Title 56 § 4-1, *et seq*, 18 U.S.C. § 1962(a), N.J.S.A. 56:8-146, and under New Jersey common law;
- L. Award Sherman interest, including pre-judgment interest, on the foregoing sums;
- M. Order Defendant to file with the Court and serve on Sherman within 30 days after the service of any restraining order or injunction, a written report, under oath, setting forth in detail the manner and form in which Defendant has complied with the order or injunction; and
- N. Grant such other, further, and different relief as the Court deems fitting, just, and proper in the circumstances.

Plaintiff hereby reserves the right to amend this Complaint to supplement or modify the factual obligations and claims contained herein, based upon information received from the Defendants, witnesses, experts, and others in the course of discovery in this matter.

DESIGNATION OF TRIAL COUNSEL

In accordance with FRCP 11(a), BARRY E. JANAY, ESQ. is hereby designated as trial counsel on behalf of Plaintiff, signature below.

CERTIFICATION OF NO OTHER ACTIONS OR PARTIES

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, that no other action or arbitration proceeding is contemplated, and that there are no other parties known to me at this time who should be joined as parties to this action.

Dated: April 12, 2023
Livingston, New Jersey

THE LAW OFFICE OF BARRY E. JANAY, P.C.
Attorneys for Plaintiff,
William Sherman d/b/a Super Plumber, LLC



Barry E. Janay, Esq.
For the Firm

Address for service: The Law Office of Barry E. Janay, P.C.
Barry E. Janay, Esq.
354 Eisenhower Parkway, Suite 1250
Livingston, New Jersey 07039

Exhibit A

(Plaintiff's Trademark Registration)



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Word Mark **SUPER PLUMBER**

Goods and Services IC 037. US 100 103 106. G & S: Air conditioning contractor services; Heating contractor services; Plumbing services. FIRST USE: 19860101. FIRST USE IN COMMERCE: 19860101

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77707273

Filing Date April 6, 2009

Current Basis 1A

Original Filing Basis 1A

Published for Opposition March 9, 2010

Registration Number 3792107

Registration Date May 25, 2010

Owner (REGISTRANT) Super Plumber, LLC LIMITED LIABILITY COMPANY NEW JERSEY P.O. Box 1802 Union NEW JERSEY 07083

Attorney of Record Jaames Lynch

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PLUMBER" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register PRINCIPAL-2(F)

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20190814.

Renewal 1ST RENEWAL 20190814

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Exhibit B

(Example of Defendant's Infringing Use of Plaintiff's Intellectual Property
- Red Arrows Added for Emphasis)

1:50

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50 Tice Blvd, Suite 340, Woodcliff Lake, NJ 07677 (Map) (Set as Local)
201-477-2752 - Main Phone Number

Royal PRO
Plumbing, Heating, Air Conditioning

Hours of Operation

Day	Open	Close
Sunday:	12:00 am	12:00 am
Monday:	12:00 am	12:00 am
Tuesday:	12:00 am	12:00 am
Wednesday:	12:00 am	12:00 am
Thursday:	12:00 am	12:00 am
Friday:	12:00 am	12:00 am
Saturday:	12:00 am	12:00 am
Other:		

Mailing Address:
50 Tice Blvd, Suite 340,
Woodcliff Lake, NJ 07677

Email:
super.plumbers@yahoo.com
201-477-2752 - Main Phone Number

Website: superplumbersnj.com/bergen-county/woodcliff-lake/

Super Plumbers Heating and Air Conditioning in Woodcliff Lake NJ delivers top-quality plumbing, heating, and air conditioning service to all homes and businesses in the north New Jersey area. We offer 24 hour Emergency plumbing repair. Also 30 minute sewer and drain cleaning service. We are experts in air conditioning repair and ac installation.

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Plumbers

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About






Royal Pro Plumbing also known as the Super Plumbers has been serving the Hoboken NJ area for the last 10 years. We are the trusted plumber in Hoboken NJ and we also offer heating and air conditioning service in Hudson County. Boiler and furnace replacements are our specialty and we offer warranties on all of our work. We also offer sewer and drain



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We have plumbers and Heating repair Technicians in every North New Jersey City and County. This includes Bergen, Hudson, Passaic, Essex, and Morris County.

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Super Plumbers Plumbing Services

Our team at Royal Pro Plumbing "The Super Plumbers" delivers top-quality plumbing, heating, and air conditioning service to all homes and businesses in the north New Jersey area.

As we mentioned, we also offer air conditioning and heating system sales, service, repair, installation, and maintenance. We service and install all gas and oil boilers, furnaces, condensers, and hot water heater units.



When you have drain blockage, sewer problems, broken water mains and any other type service problem, we can dispatch our fully licensed and insured team to fix the problem in minutes. We field emergency calls for plumbing service as well as heating and air conditioning service, making Royal Pro the only place you need to call when you want repairs done right.

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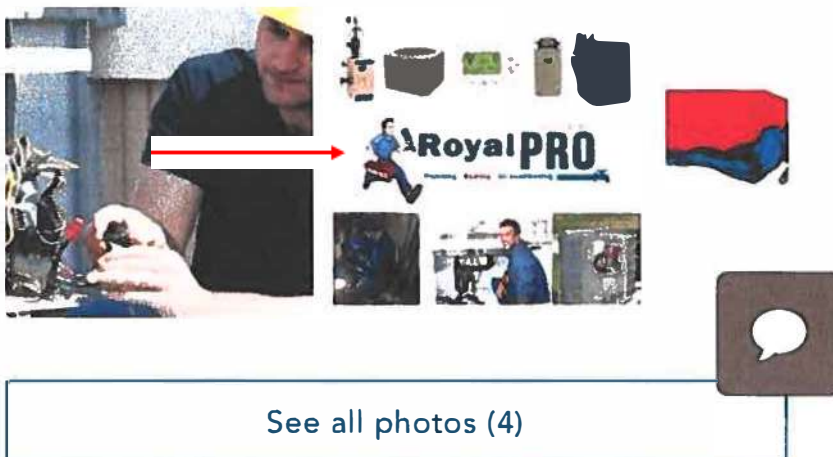
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